

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEMARCO TAFT,)
Plaintiff,)
) No. 1:19-cv-35
-v-)
) Honorable Paul L. Maloney
PARAMOUNT COFFEE COMPANY,)
Defendant.)
)

ORDER REJECTING REPORT AND RECOMMENDATION

Plaintiff DeMarco Taft filed this lawsuit without the assistance of an attorney. He has been granted *in forma pauperis* status. The magistrate judge performed an initial review of the complaint and issued a report recommending the complaint be dismissed for lack of subject matter jurisdiction. (ECF No. 12.) Taft timely filed objections. (ECF No. 13.)

After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

The magistrate judge concluded Taft's complaint was premature. Pointing to the date of the exhibit attached to the complaint, the magistrate judge concluded that Taft's

Department of Labor complaint had been pending for only one month. Under 21 U.S.C. § 399d(4)(A), Taft could not yet file a complaint in the district courts.

Taft objects. Taft agrees that the date on the letter was January 7, 2019. (ECF No. 1-2 PageID.8.) But the letter explains that his complaint was filed with the Department of Labor on September 27, 2017. (*Id.* PageID.9.)

Taft is correct. In the letter, the Administrative Law Judge states that more than "210 days have passed since the complaint was filed, triggering the Complainant's right to file a complaint in federal district court." (*Id.*) Since filing his objection, Taft received a letter from the Administrative Review Board dated March 18, 2019, which he has filed with this Court. (ECF No. 15-1.) In this letter, Review Board notes the recommendation in the R&R and states "the complaint has actually been pending before the Department of Labor for over 534 days since his original whistleblower complaint was filed, and is therefore ripe for adjudication in the District Court . . ." (PageID.59.)

The Report and Recommendation (ECF No. 12) is **REJECTED**. Taft has demonstrated that his complaint has languished for more than 210 days with the Department of Labor. Under the statute cited above and in the Report and Recommendation, Taft may bring the lawsuit in the appropriate district court.

IT IS SO ORDERED.

Date: May 3, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge